



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,411	10/12/2001	Amy B. Reed	NPI-30 (14845)	1102
22827 7590 12/08/2005 DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER VO, HAI	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

---

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/976,411  
Filing Date: October 12, 2001  
Appellant(s): REED ET AL.

---

Jason W. Johnston  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**

DEC 08 2005

**GROUP 1700**

This is in response to the appeal brief filed 10/13/2005 appealing from the Office action mailed 02/24/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

**WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The double patenting rejections over claims 1-5 of U.S. Patent No. 6,743,522 have been withdrawn in view of the terminal disclaimer filed on 10/17/2005. The terminal disclaimer disclaims the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,743,522 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The 102 art rejections over Brown Reed et al (US 6,156,677) have been withdrawn because Brown Reed does not teach a medical packaging substrate material comprising a polymer emulsion having a glass transition temperature of  $-20^{\circ}\text{C}$  or less.

The 102/103 art rejections over Bouchette (US 4,692,374) have been withdrawn because Bouchette does not teach a wet wiper comprising a polymer emulsion having a glass transition temperature of  $-20^{\circ}\text{C}$  or less.

Claims 21-41 stand rejected under 35 U.S.C. 102(b) and/or 103(a) in view of Weber et al (US 5,191,734).

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

5,191,734	WEBER et al	03-1993
5,370,132	WEBER et al	12-1994

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 21-41 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Weber et al (US 5,191,734). Weber teaches a biodegradable latex web material comprising a fibrous web being saturated with a latex binder ***having a glass transition temperature from  $20^{\circ}\text{C}$  to  $-50^{\circ}\text{C}$***  (abstract). The latex composition is a natural, synthetic or a combination of natural and synthetic polymers as shown in table II. Although the glass transition temperature ( $T_g$ ) of Hycar ®1570X55 is not expressly recited in Weber '734, US Patent no. 5,370,132 to

Art Unit: 1771

Weber et al indicates that Hycar ® 1570X55 has a  $T_g$  of  $-48^\circ\text{C}$  (see table IV of Weber '132). Similarly, Weber '132 evidences that natural rubber Hartex ® 104 having a  $T_g$  of  $-70^\circ\text{C}$ . The latex composition comprises a polyacrylate, nitrile rubber, natural rubber or a combination thereof (column 4, lines 31-34, and table II). The latex binder is about 16 to 80 dry parts per 100 parts fibers by weight (column 5, line 29) within the claimed range. Weber does not specifically disclose the biodegradable latex web material having a Gurley Hill porosity and exhibiting a % BFE as recited in the claims. However, it appears that the biodegradable latex web material of Weber is made of the same materials with the similar composition as the medical packaging substrate of the present invention; i.e., paper based web impregnated with a binder present in an amount within the claimed range. The binder has a glass transition temperature within the claimed range. Hence, it is the examiner's position that the Gurley Hill porosity and the percent bacterial filtration efficiency (BFE) would be inherently present. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Note *In re Best* 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made under 35 USC 102. It is the examiner's position that Weber anticipates or strongly suggests the claimed subject matter.

Weber does not specifically disclose the medical packaging substrate. However, the preamble has not given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not

Art Unit: 1771

depending for completeness upon the introductory clause. ***Kropa v. Robie***, 88 USPQ 478 (CCPA 1951). Additionally, it has been held that a recitation with respect to the manner in which a claimed medical packaging substrate is intended to be employed does not differentiate the claimed medical packaging substrate from a prior art biodegradable latex web satisfying the claimed structural limitations. ***Ex parte Masham***, 2 USPQ2d 1647 (1987).

**(10) Response to Argument**

***Examiner's comments regarding Appellants' issue III.***

Appellants argue that Weber is directed to a material for use in agricultural mulch, and row covers, bags, outer covering for personal care products, surgical drapes and gowns. Appellants therefore assert that Weber fails to teach or suggest such a medical packaging material. It is reminded that the preamble has not given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. ***Kropa v. Robie***, 88 USPQ 478 (CCPA 1951). Additionally, it has been held that a recitation with respect to the manner in which a claimed medical packaging substrate is intended to be employed does not differentiate the claimed medical packaging substrate from a prior art biodegradable latex web satisfying the claimed structural limitations. ***Ex parte Masham***, 2 USPQ2d 1647 (1987). Mere recitation of "medical packaging substrate" impacts no definite

Art Unit: 1771

structure to the claimed substrate and is therefore found inadequate to convey structure in any patentable sense.

Appellants argue that the claimed bacterial filtration efficiency do not necessarily flow from the teachings of Weber. The examiner disagrees. Weber teaches a biodegradable latex web material comprising a fibrous web being saturated with a latex binder ***having a glass transition temperature from 20°C to -50°C*** (abstract). The latex composition is a natural, synthetic or a combination of natural and synthetic polymers as shown in table II. Although the glass transition temperature ( $T_g$ ) of Hycar ®1570X55 is not expressly recited in Weber '734, US Patent no. 5,370,132 to Weber et al indicates that Hycar ® 1570X55 has a  $T_g$  of -48 °C (see table IV of Weber '132). Similarly, Weber '132 evidences the natural rubber Hartex ® 104 having a  $T_g$  of -70°C. The latex composition comprises a polyacrylate, nitrile rubber, natural rubber or a combination thereof (column 4, lines 31-34, and table II). The latex binder is about 16 to 80 dry parts per 100 parts fibers by weight (column 5, line 29) within the claimed range. Weber does not specifically disclose the biodegradable latex web material having a Gurley Hill porosity and exhibiting a % BFE as recited in the claims. However, it appears that the biodegradable latex web material of Weber is made of the same materials with the similar composition as the medical packaging substrate of the present invention; i.e., paper based web impregnated with a binder present in an amount within the claimed range. The binder has a glass transition temperature within the claimed range. Hence, it is the examiner's position that the Gurley Hill porosity and the percent bacterial filtration efficiency (BFE) would be inherently present. This is in line with ***In re Spada***,

Art Unit: 1771

15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties.

**Examiner's comments regarding Appellants' issue IV.**

Appellants argue that there is no suggestion or motivation to modify Weber to achieve the claimed invention and Weber is nonanalogous art. The arguments are not found persuasive for patentability and they are completely irrelevant to the 102 rejections and thus not sufficient to overcome the issues of anticipation.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

**HAI VO**  
**PRIMARY EXAMINER**

*Hai Vo*

Hai Vo

Conferees:

Terrel Morris, SPE 1771 — *FM*

Carol Chaney, SPE 1773 *CC*